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TRAFFICKING IN WOMEN AND GIRLS

Note prepared by the Office of the High Commissioner
for Human Rights and the ECE secretariat

Introduction

1. Each year, millions of individuals, the vast majority women and children, are tricked, sold, coerced or otherwise procured into situations of exploitation from which they cannot escape. Many are physically restrained. Others are intimidated in less direct ways. Perhaps the majority are tied to their situations through debt-servicing agreements which amount to little more than bondage. These individuals are the commodities of a multi-billion dollar global industry, which is dominated by highly organized criminal groups who operate with impunity. Recent research has confirmed a rapid increase in the incidence and severity of such practices as well as their highly systematic nature and exploitative effects. Increasing economic hardship - particularly in developing and transitional countries, onerous obstacles to legal migration and serious armed conflict have coincided with a reported rise in the number of cases of trafficking in the ECE region as well as a spreading of the problem to areas which were previously less affected.

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2. Trafficking was a major issue of discussion at the Fourth World Conference on Women. Participants recognized that the effective suppression of trafficking is a matter of international concern and that the use of women in international prostitution and trafficking networks has become a primary focus of international organized crime[1]. One of the Strategic Objectives of the Platform for Action is to "*eliminate trafficking in women and assist victims of violence due to prostitution and trafficking*"[2]. Governments of countries of origin, transit and destination, as well as regional and international organizations (as appropriate) are enjoined to consider ratification and enforcement of international conventions on trafficking and slavery; to address root factors that encourage trafficking in women and girls, to cooperate in the dismantling of national, regional and international networks on trafficking; to allocate resources to assist victims of trafficking and to develop preventive programmes and policies[3]. Governments are also urged to strengthen human rights instruments in order to combat and eliminate trafficking; provide legal and social services to victims; and cooperate at the international level to prosecute and punish those responsible for the organized exploitation of women and children"[4].

3. Five years after Beijing the problem of trafficking remains high on the international political agenda. A global instrument against trafficking is currently being negotiated under the auspices of the UN Crime Commission[5]. The Council of Ministers of the European Union has issued several specific directives on trafficking[6] and the Parliamentary Assembly of the Council of Europe has adopted a recommendation on the subject[7]. In July 1999 the Parliamentary Assembly of the OSCE unanimously passed a resolution condemning sex trafficking and urging States to punish traffickers. From 1999, a special section on "Trafficking" will be included in every country chapter of the US State Department's *Country Reports on Human Rights Practices*[8]. A large number of other ECE countries have amended or adopted legislation in an effort to suppress trafficking, punish traffickers and protect victims.

4. One reason behind this growing interest is clearly the connection between trafficking and the highly politicized issue of migration - particularly illegal labour migration. Many States are concerned that the actions of traffickers interfere with orderly migration and facilitate the circumvention of national immigration restrictions. The link between trafficking and organized criminal networks has also provoked a number of States into taking action at the national level and lobbying strongly for an international law enforcement response. For some States and for large sectors of the relevant NGO community, the human rights and gender dimensions of the problem have provided the impetus and the underlying rationale for action. Despite this increased attention (and perhaps because of different perceptions of the problem), many of the recommendations made in Beijing remain to be implemented

and attempts to deal with trafficking at the national, regional and international levels have, thus far, been largely ineffective.

5. The subject of this working paper is trafficking in the ECE region as one manifestation of the broader challenges currently facing women and girls in this part of the world. Section 1 of the paper sets out to establish a working definition of trafficking. Section 2 identifies patterns and causes with a particular focus on the human rights, migration and organized crime aspects of trafficking. In Section 3 an overview is made of recent counter-trafficking initiatives at the level of international law and policy, within the ECE and at the national level. Section 4 contains specific recommendations for action. These are divided into seven categories; basic policy principles; improving the information base on trafficking; ensuring an adequate legislative framework; ensuring an adequate law enforcement response; protection and support for trafficked persons; cooperation between countries; and preventing trafficking.

1. DEFINING TRAFFICKING

6. Trafficking has never been precisely defined in international law. The absence of a definition has long been considered an obstacle to effective action. Recent attempts to reach agreement on this issue have been marred by major differences of opinion concerning the ultimate end result of trafficking, its constitutive acts and their relative significance. The various definitions which have been promulgated tend to reflect the perspective of their promoters. For example, an organization concerned with orderly migration will naturally emphasize the migration aspect of trafficking. One concerned with human rights will tend to identify human rights violations as a critical defining factor. It is also apparent that those who seek to advance the cause of women working in prostitution will prefer a different definition of trafficking from those who consider all forms of prostitution intolerable.

7. In 1994 the General Assembly of the United Nations stipulated that trafficking is *the illicit and clandestine movement of persons across national and international borders... with the end goal of forcing women and girl-children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers, crime syndicates as well as other illegal activities related to trafficking such as forced domestic labour, false marriage, clandestine employment and forced adoption."*[9]. The International Crime Commission has recently taken up the spirit of this definition by proposing a distinction be made between trafficking on the one hand, and migrant smuggling, on the other. The draft Protocol Against the Smuggling of Migrants by Land, Air and Sea[10] (which is currently being developed under the auspices of the Crime Commission along with another

instrument on trafficking), defines the smuggling of migrants to mean: *the intentional procurement, for profit of the illegal entry of a person into and/or illegal residence of a person in a State of which that person is not a national or a permanent resident*"[11]. The draft Protocol on Trafficking in Persons Particularly Women and Children proposes the following definition: *Trafficking in persons means the recruitment, transportation, harbouring or receipt of persons, either by the threat or use of kidnapping, force, fraud deception or coercion or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another persons for the purpose of sexual exploitation or forced labour*[12].

8. Despite the differences in preferences and priorities referred to above, these two definitions, taken together, represent the general understanding of what trafficking is all about. Trafficking means much more than organized illegal movement of persons for profit. The critical element of trafficking is the presence of force or coercion throughout or at some stage during the process. In practice, trafficking from and through ECE countries takes place for a variety of end purposes including sweatshop labour and domestic service. However, forced prostitution is the most visible end result of trafficking and many would claim that it is the most common. While there can be no disagreement with regard to the coercive nature of *all* child prostitution, it is not always easy to identify which cases of adult prostitution involve force and which do not. It is sometimes argued that *all* women and men who prostitute themselves do so as a result of some kind of coercion including force of circumstance resulting from poverty or economic dependence. Others take the position that prostitution can be a valid work-choice for an adult individual and that coercion must be overt to amount to forced prostitution. Both the General Assembly and the Crime Commission appear to have endorsed the view that the definition of trafficking should not be limited to trafficking for sexual exploitation alone and, in addition, that some form of coercion must be involved to separate trafficking from migrant smuggling.

2. PATTERNS AND CAUSES

(a) Information on trafficking

9. While significant research on the nature and scope of trafficking has been undertaken in recent years, there is still a serious absence of reliable information - particularly at the official level. Much of that which is available is in the form of non-statistical data and indirect indicators. Very few ECE countries collect statistical information on trafficking. Where statistics do exist, their usefulness is undermined by a lack of uniformity in collection procedures and the absence of a common understanding as to the nature of trafficking. In some ECE countries, for example, trafficking is not defined in the criminal law and there is accordingly no reference point from

which to obtain statistics or to analyse information collected. Where such definitions do exist, differences between them make inter-State comparisons extremely difficult. Another reason for the paucity of statistical data on trafficking is the nature of the process. It is almost certain that the vast majority of cases remain undetected and unreported because victims fear turning to national authorities for help[13]. Improvements in data collection will clearly be an essential pre-requisite for the development of effective solutions.

(b) Trafficking fact-patterns

10. Despite the lack of detailed and verifiable information, the existence of a serious problem is beyond dispute. While trafficking patterns vary significantly, certain "typical" elements are detectable - particularly with regard to trafficking for forced prostitution. The following paragraphs seek to provide an overview of the situation within the ECE region.

11. Available information confirms that trafficking is a phenomenon which affects and implicates all ECE countries in one way or another[14]. While trafficking routes are continually changing, one constant factor is the economic distinction between countries of origin and countries of destination. As with illegal labour migration, trafficking invariably involves movement from a poorer country to a wealthier one. Filipino and Vietnamese women are trafficked to North America[15]. Nigerian women are trafficked to Germany, Italy and Belgium[16] and women from the Dominican Republic are trafficked to Austria[17]. The breakup of the former Soviet Union and the resulting economic and political dislocation led to a dramatic increase in the absolute number of women trafficked from Central and Eastern Europe. Tens of thousands of Russian and Ukranian women have been trafficked to Israel and North America[18]. Czech and Bulgarian women have been trafficked in large numbers to Germany and Austria[19].

12. Some ECE countries are simultaneously points of departure, transit and destination for trafficked person. Poland, an important European "buffer" State, is a case in point. Trafficked persons, many from countries of the former Soviet Union, pass through Poland on their way to Western Europe, Canada and the United States. Migrant women, many of whom have been trafficked comprise a significant proportion of the domestic sex industry in that country. A large number of Polish women have reportedly been trafficked to Western Europe and the Middle East[20]. Hungary and other middle-Europe countries have also become points of departure, transit and destination[21].

13. Recent experiences in Europe have confirmed that trafficking will flourish during and after protracted social conflict. The former Yugoslavia has become a primary trafficking destination as well as an important transit

and processing centre for women from Central and Eastern Europe. Anecdotal evidence of trafficking during the Kosovo conflict suggests that women and girls were kidnapped by armed gangs or otherwise lured from the refugee camps of Northern Albania[22]. Several international organizations have recently reported that trafficking to and from Kosovo is now on the rise in response to a perceived demand for prostitution on the part of wealthy foreign workers.

14. Traffickers use a variety of recruitment methods including abduction and outright purchase through family members. However many potential victims of trafficking are already seeking a chance to migrate when they are approached by an acquaintance or lured through an advertisement. Some are tricked into believing that they are being recruited for legitimate employment or marriage abroad. Others know that they are being recruited into the sex industry and even that they will be obliged to work to pay back large debts to the traffickers but are deceived about their conditions of work. The web of dependence is a complex one. Traffickers generally exercise control over a woman's legal identity by confiscating her passport and official papers. Her entry into the destination country is often illegal - serving to increase her reliance on traffickers. Debt bondage is widely used to control trafficked women and to ensure their continued profitability. Physical restraint, violence and intimidation are frequently reported.

15. Traffickers are rarely apprehended and even more rarely prosecuted. Penalties for trafficking are relatively light when compared to smuggling of drugs or weapons. One reason for the poor law enforcement response to trafficking is the low incidence of reporting. This is not difficult to understand. Victims of trafficking are rarely treated as anything other than criminals by authorities of the receiving State and are often prosecuted, detained and deported. This reality, combined with a fear of reprisals from traffickers, means that trafficked persons have little incentive to cooperate with law enforcement authorities in destination countries. A lack of knowledge of legal rights, cultural and linguistic obstacles and the absence of support mechanisms combine to further isolate trafficked women and to prevent them from seeking or receiving justice.

(c) The causes of trafficking

16. The causes of trafficking are complex and can only be discovered through analysis of the motivations of the principal actors. In relation to countries of origin it is necessary to identify the factors which encourage families to sell their female members or women to seek employment abroad and to accept the inevitable risks that accompany being trafficked. In most cases, economic factors, such as poverty and unemployment are determinative. Social and cultural factors such as discrimination and gender-based violence also seem to play an important role. Many countries of origin encourage migration, both

legal and illegal in order to relieve domestic employment pressures and ensure a return flow of hard currency. Additional factors, common to both countries of origin and countries of destination, include a lack of appropriate legislation, failure to implement legislation, and public sector corruption.

17. Trafficking is also the result of broader social and economic forces. The rapid increase in trafficking for prostitution can be traced to increased demand caused by the rapidly expanding global sex industry. Migration patterns are also relevant. Women and men now migrate in roughly equal numbers and the annual growth in female migration has been greater than that of male migration in most parts of the world including throughout the ECE region. This is the result of structural changes in countries of origin as well as changes in workforce demands in receiving countries. The global labour market reproduces traditional gendered divisions of labour. Women have less opportunity than men to engage in skilled work. They are therefore much more dependent than men for employment in the informal unregulated sectors such as the sex/entertainment industry and domestic service. Within the ECE region, opportunities for legal migration have decreased dramatically - a direct effect of more strictly regulated migration flows into Western Europe and North America. The growing feminization of labour migration on the one hand and increasingly restrictive immigration policies of recipient countries on the other have created a distinct market demand which is presently being filled by traffickers.

18. Transnationally operating crime cartels have become an important mediator of immigration in Europe and North America, "partly replacing or at least overlaying the classic push-and-pull factors of migration-inducing international ties between origin and destination country or migration-maintaining kinship and family networks[13]". These organized criminal networks are heavily involved in trafficking as well as in migrant smuggling[14]. As a result of this involvement, the trafficking process is becoming more efficient and flexible, better-structured, increasingly coercive and less amenable to traditional law enforcement responses.

19. The relative impact of various "causes" will depend upon a wide range of variables. It is therefore not possible to present a definitive list of trafficking causes which will apply equally to all regions and all situations. There is however, one uniting and pervasive factor: the multi-layered discrimination and inequality which serve to prevent women and girls from exercising power over their lives.

3. INTERNATIONAL, REGIONAL AND NATIONAL RESPONSES

(a) International law and policy

20. International law has not been able to deal with the trafficking issue systematically or consistently. Many of the early slavery conventions have been invoked in the trafficking context although their application in practice has been limited by the fact that they pre-date most modern practices relating to trafficking. The only directly relevant international instrument dealing with trafficking is the 1949 *Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others*[25]. The Convention has weak enforcement mechanisms and has not been widely ratified. The Beijing Platform for Action does however make specific reference to the Convention and urges review and strengthening of its implementation[26].

21. Until very recently, most international activity in the area of trafficking took place within the context of human rights - specifically the human rights of women. An explicit prohibition on forced prostitution and exploitation of the prostitution of others is contained in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This instrument obliges States Parties to take all appropriate measures including legislation to suppress all forms of traffic in women and the exploitation of prostitution of women[27]. Under the Convention on the Rights of the Child (CRC), States Parties are to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form[28]. Children are also to be protected from all forms of sexual exploitation and sexual abuse[29].

22. Other provisions of international human rights law are also relevant to the trafficking issue. These include the prohibition on forced labour, which is contained in the ILO Abolition of Forced Labour Convention[30] as well as the International Covenant on Civil and Political Rights[31], the International Covenant on Economic, Social and Cultural Rights[32], the European Convention on Human Rights [33]and the Inter-American Convention on Human Rights[34]. International law also forbids debt bondage[35] - a practice, which is commonly employed as a means of compelling women and girls to remain in prostitution and female migrant workers to remain with abusive employers.

23. In terms of the international human rights mechanisms themselves, attention to trafficking has generally been superficial and sporadic although several of the human rights treaty bodies - particularly the Committee on the Elimination of Discrimination against Women (CEDAW), Committee on the Rights of the Child (CRC) and Human Rights Committee (HRC), and Committee on Economic, Social and Cultural Rights (CESCR) have occasionally paid attention to the issue in examining reports from States Parties[36]. Part of the problem

for the treaty-bodies is clearly the lack of an internationally accepted legal definition of trafficking and a fundamental disagreement on the question of prostitution to which trafficking has traditionally been linked.

24. The principal body dealing with trafficking in the UN is the relatively low-profile Working Group on Contemporary Forms of Slavery which is a subsidiary body of the Sub-Commission on Protection and Promotion of Human Rights (itself a subsidiary body of the Commission on Human Rights). Forced prostitution (in the context of "exploitation of prostitution" and "trafficking") has always been on its agenda and, through the Working Group, is therefore the subject of regular resolutions adopted by both the Sub-Commission and Commission on Human Rights. In 1992, the Working Group elaborated a comprehensive Programme of Action for the Prevention of the Traffic in Persons and the Exploitation of the Prostitution of Others[37]. This document was finally adopted by the Commission on Human Rights in 1995 but has not been implemented or otherwise followed up.

25. Another important mechanism concerned with trafficking is the Special Rapporteur on Violence Against Women. In her first report, submitted to the 1995 session of the Commission on Human Rights, the Special Rapporteur examined the phenomenon of prostitution and trafficking from the perspective of gender-based violence and human rights[38]. This issue was again taken up by the Special Rapporteur two years later - both in her annual report[39] and in the context of a special mission which she undertook to Poland[40]. The Special Rapporteur will devote her next annual report (2000) specifically to the trafficking issue.

26. The Commission on the Status of Women (CSW) has played an important role in keeping alive the issue of trafficking and related sexual exploitation of women and girls. CSW has also contributed to the growing awareness of the plight of female migrant domestic workers. As a result, both issues are now regularly considered by the General Assembly and have thus been the subject of specific resolutions[41] and reports[42].

27. At the international level, consideration of trafficking is slowly moving beyond the human rights and "advancement of women" contexts. Recent initiatives have broadened the focus to include the organized crime and migration aspects of trafficking. The most significant of these is the development of a *Protocol to Prevent, Suppress and Punish on Trafficking in Persons Especially Women and Children*[43] which is accompanied by a *Protocol Against the Smuggling of Migrants by Land, Air and Sea*[44]. The Protocols will be attached to the *Convention Against Transnational Organized Crime*[45], which is currently being drafted under the auspices of the UN Crime Commission. The Convention and its Protocols are scheduled to be adopted towards the end of 2000.

28. Both Protocols are transnational cooperation agreements - their central purpose is to attack and dismantle the organized criminal elements involved in the illicit movement of migrants and trafficked persons by promoting judicial and police cooperation as well as uniform national responses. While these developments are to be welcomed, it is important to continue prioritizing the rights and well-being of individual victims. A rights-based approach would have important practical benefits. For example, prosecution of traffickers will inevitably require the cooperation of witnesses. Such cooperation will depend, to a great extent, on the capacity of States to protect and support victims of trafficking. It is encouraging to note that a number of States have recognized the link between the Trafficking Protocols' law enforcement objectives and the human rights dimensions of the practices under attack.

(b) Regional law and policy

29. The only regional treaty of direct relevance to the trafficking issue is the European Convention on Human Rights which binds the majority of ECE member States. The European Convention explicitly forbids both slavery and forced labour. It also enshrines, in law, the basic prohibition against sex-based discrimination. Other regional conventions of less direct (but perhaps increasing) relevance include the European Convention on Mutual Assistance in Criminal Cases, the European Convention on Extradition of Offenders, and the European Convention Against Money Laundering, Search and Usurpation of Profits by Criminal Means.

30. Policy development on the contemporary trafficking phenomenon is very recent with little activity reported before the early 1990s. In the ECE region, policy guidance has emanated from the principle regional bodies including the European Union (EU), the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE).

31. In 1993 the Justice and Home Affairs Council of the European Union agreed to a set of recommendations to Member States to counter trafficking[46]. Following a report on the subject[47] the European Parliament adopted, in January 1996, a comprehensive *Resolution on Trafficking in Human Beings*[48] in which trafficking was identified as a flagrant violation of human rights. In May 1996 the EU promulgated a set of *Proposals for Action to be taken by Member-States and in the Framework of the Council of Europe*[49]. In June of the same year the European Commission and the IOM held a joint conference on trafficking in women[50]. The Commission of the European Communities subsequently issued a detailed *Communication to the Council and the European Parliament on Trafficking in Women for the Purpose of Sexual Exploitation*[51].

32. In 1997, following up on its earlier recommendations on the same subject[52], the Council of the European Union adopted a *Joint Action on*

trafficking in human beings and sexual exploitation of children. Through the (non-binding) Joint Action, EU member States agree to review existing laws and practices with a view to improving judicial cooperation and ensuring appropriate penalties (including confiscation of the proceeds of trafficking). Member States are also to ensure protection for witnesses, and assistance for victims and their families. The Joint Action makes extensive provision for strengthening cooperation between member States in all relevant areas including judicial processes and information exchange. Implementation of the Joint Action is scheduled to be reviewed by the Council by end 1999. In April 1997 an EU Ministerial Conference was held on the question of traffic in women for the purpose of sexual exploitation. The Conference resulted in the *Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation.*[53] The so-called Hague Declaration sets out recommendations at national and European level to combat trafficking, to encourage and assist victims to report trafficking to the police, to detect, investigate and prosecute traffickers, to provide victims with adequate protection, appropriate assistance and support and to ensure a "fair treatment" response on the part of criminal justice systems. A second *Communication to the Council and the European Parliament* on trafficking in women was issued in December 1998[54]. The Communication affirmed that the question of trafficking in women remains high on the agenda of the EU. It focuses particularly on the need for improved inter-state cooperation and for a multi-disciplinary approach to trafficking.

33. Council of Europe activity on the trafficking issue can be traced back to a seminar organized in 1991. Since that time the Council has been extremely active in fighting trafficking - particularly through awareness raising, public information and collaboration with non-governmental organizations. In 1997 the Parliamentary Assembly of the Council of Europe adopted a Recommendation on traffic in women and forced prostitution in Council of Europe member States[55]. According to its text, the Recommendation was prompted by the dramatic increase in trafficking in women and forced prostitution in member States; the growing involvement of organized crime in these activities; and the deterioration of the treatment of trafficked women. The Assembly recommended that the Council of Ministers elaborate a convention focussing on human rights, stipulating repressive, anti-trafficking measures through harmonization of laws, improved police and judicial communication, coordination and cooperation; and organizing assistance and protection for victims. Pending such a Convention, the Council recommended the adoption of a recommendation on the subject by the Committee of Ministers. It further recommended the Committee to urge member States, inter alia, to increase public awareness of the problem, train immigration staff, strengthen the national and international police response, ensure appropriate penalties; and provide assistance to victims especially those willing to testify against

women discovered in such situations. Attempts to prosecute traffickers are often compromised by the inability of national law enforcement to secure cooperation of victims and witnesses because of a failure to ensure victim security. For example, there are very few examples of credible witness protection programmes for trafficked persons within the ECE region. This is despite the growing awareness of the organized criminal involvement in trafficking and the very real danger that such groups pose to trafficked persons.

37. Some of the other approaches which have been taken by Governments of this region to resolving the trafficking problem have been similarly counterproductive. Many governments have sought to address trafficking by cracking down on migrant prostitution. In the absence of safeguards and support structures, these responses have invariably caused great distress and hardship to marginalized and vulnerable communities - further isolating and endangering victims of trafficking while doing nothing to apprehend or punish traffickers.

38. Increasingly however, governments of the ECE region are displaying a willingness, at least in principle, to take this issue seriously. The various policy initiatives outlined in the previous sub-section provide ample evidence of this trend. At the national level legislation has been strengthened in a number of countries with the aim of preventing exploitation of prostitution, punishing traffickers and dealing with the organized criminal aspects of trafficking. Some ECE countries, including Belgium, Italy and the Netherlands, have developed legal and administrative frameworks which encourage prosecution of traffickers through extending protections (such as temporary residence and social assistance) to victims of trafficking.

39. Many governments of the ECE region have also evidenced a willingness to work more closely with national women's and human rights NGOs - most of whom demonstrate a practical understanding of the trafficking situation and of the kind of solutions which are needed. In the worst affected countries national and international NGOs work together to support the reintegration of trafficked women and to prevent further trafficking through education and sensitization campaigns. Many national NGOs are also providing much-needed practical support to victims of trafficking in the form of repatriation assistance, emergency accommodation, health-care, job assistance and protection for families.

4. BREAKING THE TRAFFICKING CYCLE: RECOMMENDATIONS FOR ACTION

40. Trafficking is not one event but a series of constitutive acts and circumstances implicating a wide range of actors. It is essential that anti-trafficking measures take account of this fact and that efforts be made

- Women and children should be not treated the same in the identification, rescue and repatriation process. Children have special rights and special needs which must be recognized and protected.

- Efforts must be made to address the root causes of trafficking, including poverty, inequality, discrimination and racism.

(b) Improving the information base

42. Realistic, relevant and effective anti-trafficking strategies must be based on current and reliable information. The quality of information presently available makes it extremely difficult to determine the real dimensions of the trafficking phenomenon and to prepare appropriately targeted responses. There is an urgent need to improve data collection, analysis and exchange.

43. Governments (and, where applicable, intergovernmental and non-governmental organizations) should consider:

- Standardizing statistical data on trafficking at both the international and regional levels and, to this end, agreeing on a definition of trafficking and its constitutive elements as well as developing detailed indicators on trafficking.

- Improving information sharing between various state agencies at the national level - for example, between social and health inspectorates and law enforcement services.

- Establishing national-level data bases on traffickers and trafficking methodologies in countries of origin, transit and destination.

- Setting up international or regional data-bases to identify and track criminal networks involved in trafficking as well as methods and means which are being employed - making full use of the facilities and analytical support which could be provided by Europol and Interpol in the implementation of this initiative.

- Undertaking, encouraging and supporting research into trafficking (particularly into trafficking methods and motivations of the principal actors).

- Recognizing the role of NGOs in improving the information base and integrating NGOs into information strategies.

(c) Ensuring an adequate legal framework:

44. The lack of appropriate legislation at the national level has been identified as a primary obstacle in the fight against trafficking. In addition to assisting in the identification and prosecution of traffickers, appropriate legal provisions will encourage national and inter-state reporting and promote uniformity in data collection and analysis.

45. Governments (and, where applicable, intergovernmental and non-governmental organizations) should consider:

- Ensuring that the crime of trafficking is precisely defined in national law and that detailed guidance is provided as to its various punishable elements.

- Ensuring that trafficking and related practices such as debt bondage and forced prostitution are criminalized.

- Establishing, through legislation, administrative and criminal liability of legal persons (e.g. travel agents, migration agents, etc.) as well as natural persons.

- Making legislative provision for effective, proportional and dissuasive criminal penalties (including custodial penalties giving rise to extradition in the case of individuals).

- Making legislative provision for confiscation of the instruments and proceeds of trafficking and related offences.

- Reviewing current legal conditions and administrative controls and conditions relating to the functioning of businesses which can be used as covers for trafficking, such as marriage bureaux and escort services.

- Ensuring that protection of trafficked persons is built into anti-trafficking legislation. Including legal protection of the right of trafficked persons to reside temporarily in the destination country pending completion of judicial proceedings.

- Ensuring that legislation prevents trafficked persons from being prosecuted for the illegality of their coerced entry or residence or for the coerced activities they perform as a consequence of their status as trafficked persons.

- Making legislative provision for trafficked persons to be given information and legal assistance as well as appropriate social support

(including housing and health care) and ensuring that entitlement to such support is not discretionary but is available as a right for all persons who have been identified as trafficked.

- Ensuring that the right of trafficking victims to pursue civil claims against traffickers, including restitution and compensation for damages, is enshrined in law.

(d) Ensuring an adequate law enforcement response

46. Despite the fact that hundreds of thousands of women and girls are believed to be trafficked from, to and through this region each year, records show that only a small fraction of traffickers are reported or apprehended, let alone prosecuted. Instances of official collusion with traffickers are also not unknown. Moreover, while law enforcement would obviously benefit from the cooperation of victims and community members, many individuals are reluctant or unable to report traffickers and serve as witnesses, often fearing or mistrusting police and other officials and unable to count on any protection from the authorities. Effective anti-trafficking law enforcement requires skill, vigilance and commitment. It is also necessary to create incentives for trafficked persons and others to come forward to report traffickers.

47. Governments (and, where applicable, intergovernmental and non-governmental organizations) should consider:

- Ensuring that law enforcement authorities are provided with adequate investigative powers and techniques to enable effective investigation and prosecution.

- Establishing specialized anti-trafficking units (comprising both women and men) in order to promote specialization, competence and professionalism.

- Reviewing anti-trafficking strategies which emphasize prosecution of prostitution in order to ensure that traffickers remain the focus of law enforcement efforts.

- Sensitizing police, prosecutors, border and judicial authorities to the problem of trafficking and ensuring the provision of specialized training in identifying trafficking cases, combatting trafficking and protecting the rights of victims; and encouraging cooperation with NGOs in the development and implementation of such training.

- Establishing witness protection programmes which include the following elements: identification of a safe place in the receiving country;

rectification of immigration status; access to independent legal counsel; and identification of options for resettlement or repatriation.

- Encouraging law enforcement authorities to work closely with non-governmental agencies in order to ensure that trafficking victims receive the necessary support and assistance.

(e) Protection and support for trafficked persons

48. The trafficking cycle cannot be broken without attention to the needs of victims.

49. Governments (and, where applicable, intergovernmental and non-governmental organizations) should consider:

- Providing victims of trafficking with legal and other assistance in the course of any criminal, civil and other actions against traffickers/exploiters.

- Ensuring the safe repatriation of victims of trafficking and exploring the option of residency in the receiving country or third-country re-settlement in specific circumstances (e.g.: to prevent reprisals or in cases where re-trafficking would be likely).

- Ensuring, in cooperation with NGOs, that safe and adequate shelter is made available to victims of trafficking.

- Ensuring, in cooperation with NGOs, that victims of trafficking are given access to primary healthcare and counselling as well as legal assistance.

- Using proceeds from fines, seizure and confiscation of the profits of trafficking for victim support and assistance as well as for compensation to victims.

(f) Cooperation and coordination between countries

50. Trafficking is a regional and a global phenomenon which cannot be dealt with solely at the national level: a strengthened national response can often just mean that the operations of traffickers are moved elsewhere. There is increasing recognition of the important role which cross-border cooperation can play in breaking the trafficking cycle. Such cooperation is particularly important between countries of origin and countries of destination.

51. Governments (and, where applicable, intergovernmental and non-governmental organizations) should consider:

- Establishing bilateral agreements between governments of countries of origin and countries of destination aimed at preventing trafficking and protecting the rights of trafficked persons as well as providing for minimum work standards, model contracts, modes of repatriation etc.

- Ensuring cooperation between countries of origin and countries of destination with regard to the welfare of trafficked persons.

- Ensuring judicial cooperation between States in investigations and judicial processes relating to trafficking and similar offences; assistance in the exchange of related information; and the adoption of common prosecution methodologies.

- Making provision for direct transmission of requests for assistance between locally competent authorities in order to ensure speed and to foster the development of cooperative relations at the working level.

- Making maximum use of existing cooperative frameworks including those which have been established within the European Union, the Council of Europe and the OSCE.

- Encouraging and facilitating cooperation between NGOs in countries of origin and in destination countries. This is particularly important to ensure support and assistance to trafficked women who return home.

- Ensuring that the global instruments currently being developed to fight trafficking and migrant smuggling reflect and uphold the international human rights principles which have been developed through the United Nations.

- Elaborating regional and sub-regional treaties on trafficking - taking the Vienna Protocol as a base-line and framework.

(g) Preventing trafficking

52. Good laws, strong law enforcement and improved cooperation between States will, individually and collectively, help to prevent trafficking. However, additional prevention strategies developed on the basis of an understanding of the motivations behind trafficking are also necessary. The underlying root causes of trafficking, including poverty, discrimination, corruption and inequality between countries, should also be openly and honestly addressed. Failure to come to terms with these (admittedly more difficult) issues will prevent other anti-trafficking efforts from achieving any significant success.

At the National Level

53. Governments (and, where applicable, intergovernmental and non-governmental organizations) should consider:

- In countries of origin, reviewing review national laws, policies and practices with a view to identifying and rectifying all forms of discrimination on the basis of sex. Particular attention should be paid to discrimination in relation to economic and social rights.

- In countries of origin, ensuring that potential migrants in countries of origin are properly informed about the risks of migration and the avenues available for legal migration through, for example, information campaigns aimed at promoting awareness amongst prospective female migrants as well as amongst the general public.

- In countries of destination, examining ways and means by which they, as destination countries, could provide increased opportunity for legal, gainful and non-exploitative labour migration.

- In countries of origin, avoiding promotion of the export of migrant labour without first ensuring that the regulatory and supervisory mechanisms to protect the rights of migrant workers are in place.

- In countries of origin and destination, identifying the link between trafficking and public sector corruption and taking steps to deal with such corruption.

- In countries of destination, examining the effect on women, of repressive and/or discriminatory immigration and migrant labour laws.

At the Bilateral, Regional and International Levels

54. Governments (and, where applicable, intergovernmental and non-governmental organizations) should consider:

- Ensuring that development cooperation focuses on fighting poverty and discrimination through the adoption of a rights based approach and ensuring the integration of a gender perspective.

- Ensuring that development cooperation with countries of origin specifically addresses the issue of trafficking through, for example, promoting alternative income generating options for vulnerable women and helping governments to develop social support programmes for families at risk.

- Ensuring that development cooperation supports NGOs working in trafficking - particularly local and national programmes aimed at victim assistance and reintegration.

- Increasing support to the international human rights mechanisms which are dealing with trafficking, particularly the Human Rights Treaty Bodies and the Special Rapporteur on Violence Against Women.

CONCLUSION

55. Five years after Beijing it is necessary to confront the fact that more women and more children are being trafficked than ever before. The pool of potential victims in Central and Eastern Europe as well as in other parts of the world is growing exponentially because of increased poverty, lack of employment opportunities, violence, discrimination and inequality. Increasingly restrictive immigration policies on the part of some of the more wealthy States force individuals desperate for work into the arms of unscrupulous traders. Traffickers are able to operate with impunity because of inefficient law enforcement compounded, in some cases, by official corruption and ambivalent attitudes towards prostitution. The global sex industry, which generates billions of dollars for governments as well as for organized criminal networks, is allowed to flourish without constraint.

56. These are complex, difficult issues and there will be no quick or easy solutions. Combatting trafficking will require holistic, interdisciplinary, and long-term approaches which address each aspect of the trafficking cycle and which explicitly recognize the links between trafficking, migration and transnational organized crime. The Beijing Platform for Action placed specific emphasis on the human rights dimensions of trafficking. Human rights are not a separate consideration or an "additional" perspective. They are the common thread which should unite all anti-trafficking efforts. In July 1999 the High Commissioner for Human Rights, Mary Robinson, sent a message to States involved in drafting the first international agreement on trafficking in fifty years. The following excerpt provides a fitting conclusion to this paper.

> "Trafficking and related practices such as debt bondage, forced prostitution and forced labour are violations of the most basic of all human rights. The right to life; the right to dignity and security; the right to just and favourable conditions of work; the right to health and the right to equality. These are rights, which we all possess - irrespective of our sex, our nationality, our social status, our occupation or other difference. Trafficking is also inherently discriminatory. In the case of trafficking into the global sex industry we are talking about men from relatively prosperous countries paying for the sexual services of women and girls - and sometimes men and boys -

from less wealthy countries. This is more than a labour rights issue or an issue of unequal development. It is a basic human rights issue because it involves such a massive and harmful form of discrimination[60]."

NOTES:

[1] Beijing Platform for Action, §122.

[2] *Ibid.* Strategic Objective D.3.

[3] *Ibid*, §130.

[4] *Ibid*, §230 (n).

[5] Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, UN Doc. A/AC.254/4/Add.3/Rev.3 (1999).

[6] See further notes 54-59, 62 *infra* and accompanying text.

[7] St Petersburg Declaration of the OSCE Parliamentary Assembly, 10 July 1999.

[8] Harold, Hongju Koh, Assistant Secretary of State for Democracy, Human Rights and Labour, Testimony before the House Committee on International Relations, Washington D.C., 14 September 1999.

[9] General Assembly resolution 49/166 of 23 December 1994.

[10] Draft Protocol against the Smuggling of Migrants by Land, Air and Sea supplementing the United Nations Convention against Transnational Organized Crime, UN Doc. A/AC.254/4/Add.1/Rev.2 (1999).

[11] *Ibid*, Article 2. 1. (a).

[12] Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, Article 2 (2) Option 1 as set out in UN Doc. A/AC.254/4/Add.3/Rev.3 (1999).

[13] International Organization for Migration (IOM), *Trafficking in Women: A Review of Statistical data in Europe*, paper presented to the Interpol International Conference on Trafficking in Women, Vienna, October 1998.

[14] The information in this and the following paragraphs is compiled largely from reports issued by the Geneva-based International Organization for

Migration. A great deal of other information is available, particularly from non-governmental organizations. However, with some exceptions much of this information, whilst immensely valuable in many respects, is anecdotal and difficult to verify and has therefore not been included.

[14] See IOM, papers and statements from the *IOM Regional Seminar on Irregular Migration and Migrant Trafficking in East and South-East Asia* (IOM December, 1996, Manila); and reports and statements from the *Third IOM Regional Seminar on Irregular Migration and Migrant Trafficking in East and South-East Asia:* (IOM, September, 1998, Bangkok, Philippines).

[15] *Trafficking in Human Beings in Sub-Saharan Africa: The case of Nigeria*, paper presented on behalf of the IOM to the International Conference: Frontiers of Crime: Trafficking in Human Beings, A New Form of Slavery, Verona, Italy, 22 October 1999. See also, IOM, *Trader in Prostitutes sentenced for nine years*, Trafficking in Migrants, Quarterly Bulletin (IOM, 17/1998).

[16] IOM, *Trafficking in Women to Austria for Sexual Exploitation*, 1996 (Hereinafter: IOM-Austria Report). See also, IOM, *Trafficking in Women from the Dominican Republic for Sexual Exploitation*, (IOM; June, 1996).

[17] See IOM, *Information campaign Against Trafficking of Women from Ukraine*, (research report, IOM, July, 1998). See also Israel Women's Network, *Trafficking in Women to Israel and Forced Prostitution*, 17 REFUGE: Canada's Periodical on Refugees, November 1998.

[18] IOM-Austria Report, *supra* and IOM/International Centre for Migration Policy Development: *Trafficking in Women from Central and Eastern Europe: Focus on Germany*, in Migration in Central Eastern Europe, 1999 Review, (1999)

[19] See IOM, *Migrant Trafficking through the Baltic States and Neighbouring Countries*, (report of an IOM seminar, September 1998); see also, Mees et al. *Multi-disciplinary research on the Phenomenon of Trafficking in Human Beings from and International and National Perspective: A Pilot Study with Poland and Hungary*, University of Ghent, Belgium, 1998 [hereinafter Poland-Hungary Study]

[20] See IOM, *Prevention of Trafficking in Women in Hungary*, (IOM; Budapest, July 1999). See also, Poland-Hungary Study, *supra*.

[21] Information provided by the Council of Europe. See also lead article in IOM Quarterly Bulletin 7/99 (1999), *Traffickers Make Money through Humanitarian Crises*.

[22] International Migration Forum: *A Tentative Summary*, cited in UN Doc. E/CN.15/1999/CRP.2 (1999). At p. 5.

[24] International Centre for Migration Policy Development, The Relationship Between Organized Crime and Trafficking in Aliens, (June 1999).

[25] Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others.

[26] Beijing Platform for Action, §122.

[27] Convention on the Elimination of All Forms of Discrimination against Women, Art. 6.

[28] Convention on the Rights of the Child, Art. 35.

[29] Convention on the Rights of the Child, Art. 34.

[30] ILO Convention No. 105 (adopted 25 June 1957 at the 40th session of the ILO General Congress, entered into force 17 January 1959).

[31] 993 UNTS 171.

[32] 993 UNTS 3

[33] EUROPE TS, No. 5.1

[34] Basic Documents Pertaining to Human Rights in the Inter-American System, OEA at 25-55 (1988).

[35] Debt bondage is defined in Article 1(a) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery as being "the status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined".

[36] Specific reference to trafficking and related exploitation was made in a number of concluding observations/comments adopted by those bodies during the last 12 months, including those adopted by the HRC on Japan, by the CRC on Japan, Thailand, Fiji and Maldives, by CEDAW on Indonesia and New Zealand and by CESCR on Sri Lanka (about sexual exploitation of children). With reference to Germany, CESCR members also expressed their concern at so-called "marriage trafficking" in Europe.

[37] The Programme is set out in the *Report of the Working Group on Contemporary Forms of Slavery on its twentieth session, Programme of Action for the Prevention of Trafficking in Persons and the Exploitation of the Prostitution of Others*, UN Doc. E/CN.4/Sub.2/1993/30 (1993).

[38] *Preliminary Report Submitted by the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms Radhika Coomaraswarmy*, UN Doc. E/CN.4/1995/42 (1994).

[39] *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms Radhika Coomaraswarmy*, UN Doc. E/CN.4/1997/47 (1997).

[40] *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms Radhika Coomaraswarmy, Report of a mission to Poland*, UN Doc. E/CN.4/1997/47/Add.1 (1996).

[41] The most recent resolution of the General Assembly on the subject of trafficking is Resolution 53/111 (1998).

[42] The most recent report of the Secretary-General to the General Assembly on the subject of trafficking is contained in UN Doc. A/53/409 (1998).

[43] Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, UN Doc. A/AC.254/4/Add.3/Rev.3 (1999)

[44] Draft Protocol against the Smuggling of Migrants by Land, Air and Sea supplementing the United Nations Convention Against Transnational Organized Crime, UN Doc. A/AC.254/4/Add.1/Rev.2 (1999)

[45] Draft United Nations Convention Against Transnational Organized Crime, UN Doc. A/AC.254/4/Rev.4 (1999).

[46] Recommendations on Trade in Human Beings - Council Press Release 10550/93 of 29-30 November 1993 at Annex 2.

[47] Report on Trafficking in Human Beings of the Committee on Civil Liberties and Internal Affairs, 14 December 1995, A4-0326/95.

[48] Resolution on Trafficking in Human Beings of the European Parliament, adopted 18 January 1996, OJ No C 32, 5.2. 1996, p. 88.

[49] CDEG (96) 6 rev. 10 May 1996

[50] *See* European Commission, Report of the Conference on Trafficking in Women, 10-11 June 1996, Vienna. CAB./183/96/ENG

[51] Commission of the European Communities, Communication from the Commission to the Council and the European Parliament on Trafficking in Women for the Purpose of Sexual Exploitation, COM (96) 567 final.

[52] Recommendations of the Council of the European Union on combatting trafficking in human beings, adopted on 29 and 30 November 1993.

[53] The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation, The Hague, 27 April 1997.

[54] Communication to the Council and the European Parliament for Further Actions in the Fight Against Trafficking in Women, COM (1998) 726 final.

[55] Recommendation 1325 (1997) adopted by the Assembly on 23 April 1997.

[56] Moscow document 1991, as cited in St Petersburg Declaration of the OSCE Parliamentary Assembly, 10 July 1999.

[57] Petersburg Declaration of the OSCE Parliamentary Assembly, 10 July 1999.

[58] Communication to the Council and the European Parliament for Further Actions in the Fight Against Trafficking in Women, COM (1998) 726 final at p. 12. This communication also contains information on the Commission's various anti-trafficking activities and programmes.

[59] These recommendations are drawn from a range of conference papers, policy documents and draft legal texts including the draft Vienna Protocol, EU, OSCE and Council of Europe documents cited above.

[60] Message from the High Commissioner for Human Rights, Mary Robinson to the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Fourth session, Vienna, 28 June-9 July 1999.